

§ 1450.25

may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to §1450.11 of this regulation.

§ 1450.25 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1450.26 Refunds.

(a) Refunds shall promptly be made when—

(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 1450.27 Interest, penalties, and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with subpart D of this regulation.

§ 1450.28 Recovery when paying agency is not creditor agency.

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the

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number of installments to be collected, the amount of each installment, and the commencing date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a) (1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its claim to the employee's paying agency for collection pursuant to §1450.24. The paying agency must certify the total amount of its collection and provide copies to the creditor agency and the employee as stated in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 et seq.), or other similar funds, be administratively offset to collect the debt. (31 U.S.C. 3716 and 102.4 FCCS.)

(b) *Responsibilities of paying agency—*

(1) *Complete claim.* When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the paying agency receives an incomplete debt claim from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided, and a properly certified debt claim received, before action will be taken to collect from the employee's current pay account.

(3) *Review.* The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) *Employees who transfer from one paying agency to another.* (1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

Subpart D—Interest, Penalties, and Administrative Costs

§ 1450.29 Assessment.

(a) Except as provided in paragraph (h) of this section, or §1450.30, FMCS shall assess interest, penalties and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. Before assessing these charges, FMCS will mail or hand-deliver a written notice to the debtor. This notice shall include a statement of the agency's requirements concerning these charges. (Sections 1450.9 and 1450.21).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency. If FMCS should use an "advance billing" procedure—that is, if it mails a bill before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. FMCS will exercise care to insure that the notices required by this section are dated and mailed or hand-delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. FMCS may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, FMCS may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not